



#8

Approved for use through 10/31/2002. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Docket Number (Optional)

First named inventor: Steven Meznis

Application No.: 09/682,451

Art Unit:

Filed: 08/15/2001

Examiner: Tamai, Karl I

Title: Electric-Magnetic Field Motivator

Attention: Office of Petitions  
Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (703) 305-9282.The above-identified application became abandoned for failure to file a timely and proper reply to a  
notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the  
expiration date of the period set for reply in the Office notice or action plus an extension of time  
actually obtained.

## APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee -- required for all utility and plant applications  
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

## 1. Petition fee

 Small entity fee \$ 650.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27. Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

## 2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in  
the form of \_\_\_\_\_ (identify type of reply): has been filed previously on \_\_\_\_\_ is enclosed herewith.

B. The issue fee of \$ \_\_\_\_\_

 has been paid previously on \_\_\_\_\_ is enclosed herewith.

[Page 1 of 2]

Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comments on  
the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC  
20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

1/2003 AWONDAF1 00000101 09682451

1:2453 650.00 OP

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**3. Terminal disclaimer with disclaimer fee**

- Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

**4. STATEMENT:** The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

06/16/03

Date

Telephone  
Number: (707) 923-1446

  
Signature

Steven Mezinis

Typed or printed name

220 Harmony Lane

Address

Garberville, CA 95542

Enclosures:  Fee Payment

Reply

Terminal Disclaimer Form

Additional sheets containing statements establishing unintentional delay

Other: \_\_\_\_\_

**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

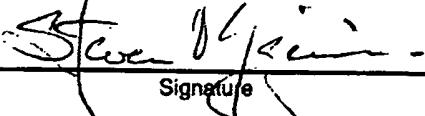
I hereby certify that this correspondence is being:

deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231.

transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

6/16/03

Date

  
Signature

Steven Mezinis

Type or printed name of person signing certificate

**List of Enclosures**

Patents that which already has been indicated in form Pto/SB/64, enclosed you will find:

- 1) Document 1: Copies of 1<sup>st</sup> office action documents
- 2) Document 2: Copies of 2<sup>nd</sup> office action documents
- 3) Document 3: Copies of 3<sup>rd</sup> office action documents
- 4) Documents 4a and b: Response to 2<sup>nd</sup> office action
  - a) Cover letter
  - b) Documents addressing 2<sup>nd</sup> office action issues
    - i) Claim amendments
    - ii) Change of invention title
    - iii) Remarks and arguments
- 5) Document 5 – 1<sup>st</sup> Petition (under *Unavoidable* category): Reasons for delay that led to abandonment
- 6) Document 6: Copies of the 4<sup>th</sup> office action documents
- 7) Document 7: List of Enclosures and Reasons for Delay that lead to this Petition to revive an abandoned application under the *Unintentional* category

The notes on the office actions are mine and were for my use.

Please note the change in personal information at the bottom of this page.

**Reasons for Second Delay**

I hereby petition to reinstate an abandoned patent application due to an unintentional delay for the following reasons:

- a) There is the original time sequence stated in the first petition (Document 5, page 2)
- b) With and since office action 4 (Document 6, Office Action 4) dated, 1/21/03; several events occurred:
  - i) Having to accumulate the petition fee \$650 as stated in Document 6, Office Action 4, Alternate Venue, page 4.
  - ii) The dissolution of a 11 year personal relationship
  - iii) Finding new employment
  - iv) Having to move household to accommodate said new employment (twice)

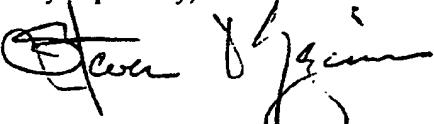
In conclusion, I request that abandonment of patent application no. 09/682/451 be reconsidered under the *unintentional* category. This request is made under the *unintentional* category because it definitely was unintended; the causes of the delay that brought the application into abandonment were a failed fax; time was needed to accumulate the petition fee; the disruptions that can be caused at the end of a personal relationship; and the necessity to find new employment along with procurement of living conditions.

I recognize that this petition is past the 2-month time reference stated in Document 6, Office Action 4, page 1. Events in (b) above were the major contributions to why this petition is not timely.

However, I respectfully submit this petition to reinstate an abandoned Patent Application No. 09/682/451 under the *unintentional* category. I definitely did not intend for this patent application to be abandoned.

"Life is what happens to you while you're busy making other plans".

Very respectfully,



Steven Mezinis

Date: 6/16/03

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OFFICE OF PETITIONS



## Office Action Summary

Office Action Summary	Application No.	Applicant(s)
	09/682,451	MEZINIS, STEVEN
	Examiner Tamaie Karl	Art Unit 2834

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138(b); in no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of the communication, even if timely filed, may reduce any extension period available. See 37 CFR 1.704(e).

## Status

- 1)  Responsive to communication(s) filed on \_\_\_\_\_.
- 2a)  This action is FINAL. 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.O. 11, 453 O.G. 213.

## Disposition of Claims

- 4)  Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) \_\_\_\_\_ is/are rejected.
- 7)  Claim(s) 1-7 is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4)  Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_

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**DETAILED ACTION**

1. The claims are objected to under 37 CFR 1.71, as being so incomprehensible as to preclude a reasonable search of the prior art by the examiner. For example, the following items are not understood: it is unclear if the Applicant has provided one claim with seven parts or seven separate claims.

Applicant is required to submit an amendment which clarifies the claims so that the examiner may make a proper comparison of the invention with the prior art.

Applicant should be careful not to introduce any new matter into the disclosure (i.e., matter which is not supported by the disclosure as originally filed).

A shortened statutory period for reply to this action is set to expire ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing date of this letter.

2. The examiner has provided the following examples of claims to assist the Applicant in drafting acceptable claims:

1) A device that uses electrostatic and magnetic fields to produce motion comprising a motivator and a target, where said device includes a means for inducing an electric and magnetic field in said motivator and said target, said means for inducing an electric field including a means to induce an electric charge within a conductive mass to polarize the mass by burying dielectrically insulated high voltage emitters within said mass, and a means to assist said polarizing of said conductive mass with a low voltage field, where the fields

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induced in said target by said motivator will be attracted and/or repelled by said motivator.

OR

- 1) A device that uses electrostatic and magnetic fields to produce motion comprising a motivator and a target.
- 2) The device of Claim 1, including a means for inducing an electric and magnetic field in said motivator and said target.
- 3) The device of Claim 2, where said means for inducing an electric field including a means to induce an electric charge within a conductive mass to polarize the mass by burying dielectrically insulated high voltage emitters within said mass.
- 4) The device of Claim 3, including a means to assist said polarizing of said conductive mass with a low voltage field, where the fields induced in said target by said motivator will be attracted and/or repelled by said motivator.

The examiner has not considered the above claims in regards to the statutory requirements for obtaining a patent. The examiner has merely repeated the Applicant's original claims as a single claim and as dependent claims, as best understood by the examiner. The Applicant should consult the MPEP 714 regarding the manner and form of making amendments to the claims and the specification.

*[Handwritten note: "MPEP 714" is circled.]*

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3. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl I.E. Tamai at (703) 305-7066.

The examiner can be normally contacted on Monday through Friday from 8:00 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Nestor Ramirez, can be reached at (703)308-1371. The facsimile number for the Group is (703)305-3432.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist at (703) 308-0956.

Karl I Tamai  
PRIMARY PATENT EXAMINER  
January 15, 2002

KARL TAMAI  
PRIMARY EXAMINER  
DAB



Office Action Summary	Application No.	Applicant(s)
	09/682,451	MEZINIS, STEVEN
	Examiner Tamaie Karl	Art Unit 2834

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). No credit, however, may be given for time after 8 months from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If no period for reply is specified above, the minimum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three (3) months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.76(e).

Status

1)  Responsive to communication(s) filed on 04 January 2002.  
 2a)  This action is FINAL.      2b)  This action is non-final.  
 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.  
 4)  Claim(s) 1-4 is/are pending in the application.  
 4a) Of the above claim(s)       is/are withdrawn from consideration.  
 5)  Claim(s)       is/are allowed.  
 6)  Claim(s) 1-4 is/are rejected.  
 7)  Claim(s)       is/are objected to.  
 8)  Claim(s)       are subject to restriction and/or election requirement.

Disposition of Claims

9)  The specification is objected to by the Examiner.  
 10)  The drawing(s) filed on       is/are: a)  accepted or b)  objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 11)  The proposed drawing correction filed on       is: a)  approved b)  disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.  
 12)  The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a)  All b)  Some \* c)  None of:  
 1.  Certified copies of the priority documents have been received.  
 2.  Certified copies of the priority documents have been received in Application No.      .  
 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.  
 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a)  The translation of the foreign language provisional application has been received.  
 15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1)  Notice of References Cited (PTO-892)  
 2)  Notice of Draftsperson's Patent Drawing Review (PTO-348)  
 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s)      .  
 4)  Interview Summary (PTO-413) Paper No(s)      .  
 5)  Notice of Informal Patent Application (PTO-152)  
 6)  Other:      

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Art Unit: 2834

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**DETAILED ACTION****Specification**

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

*Information Disclosure Statement of Form 892*

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

*Claim Rejections - 35 USC § 112*

3. The following is a quotation of the first paragraph of 35 U.S.C. 112: *enable a person skilled in the art to practice the invention.*  
The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Claims 1-4 rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling.

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The specification does not disclose how the target is to be supported to provider rotational, linear or vibrational energy. The support for the target is critical or essential to the practice of the invention, but not included in the claims is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

*Am on sentences*

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the structural relationship between the motivator, the target and a means for inducing and electric and magnetic field. The structure which goes to make up the device must be clearly and positively specified, so as to set forth the metes and bounds of the invention. 1See MPEP § 2171.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hosoya et al. (Hosoya) (JP 04-101,672). Hosoya teaches a movitator 2 driving a target 11 by electrostatic electrodes and a magnetic field.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hosoya in further view of Bobbio. Hosoya teaches the electrodes buried in the mass on a conductive core 2. Hosoya teaches a low voltage DC source 23 to assist in the polarization of the electrodes P to attract and repel the movitator. It is inherent that the electrodes P are insulated from the core. Hosoya teaches every aspect of the invention except dielectric insulation on the electrodes. Bobbio teaches dielectric insulation for electrostatic electrodes. It would have been obvious to a person of ordinary skill in the art at the time of the invention to construct the motor of Hosoya with the electrodes insulated with a dielectric to prevent short circuits with the stator case or between electrodes.

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**Art Unit: 2834**

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl I.E. Tamai whose telephone number is (703) 305-7066.

The examiner can be normally contacted on Monday through Friday from 8:00 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Nestor Ramirez, can be reached at (703)308-1371. The facsimile number for the Group is (703)305-3432.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

Karl I Tamai  
PRIMARY PATENT EXAMINER  
April 22, 2002

*John C. Tamm*  
KARL TAMAI  
MINER  
QUALITY EXAMINER



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address CONFIRMATION OF PATENT AND TRADEMARK  
Washington, D.C. 20591  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,451	05/22/2001	Steven Mezinis		9315
13492	13492	13492		
STEVEN MEZINIS 220 CARNEROS AROMAS, CA 95004-9717			EXAMINER	
			TAMMI, XARL, I	
		ART UNIT	PAPER NUMBER	
		2612		

DATE MAILED: 10/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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OFFICE OF PETITIONS

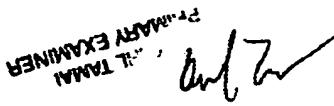
Notice of Abandonment	Application No.	Applicant(s)
	09/682,451	MEZINIS, STEVEN
	Examiner	Art Unit
	Tamai IE Karl	2834

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address-

This application is abandoned in view of:

1.  Applicant's failure to timely file a proper reply to the Office letter mailed on 24 April 2002.
  - (a)  A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b)  A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (ii) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c)  A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d)  No reply has been received.
2.  Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a)  The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b)  The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.
 

The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c)  The issue fee and publication fee, if applicable, has not been received.
3.  Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a)  Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b)  No corrected drawings have been received.
4.  The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5.  The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6.  The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7.  The reason(s) below:

  
 Primary Examiner  
 Tamai IE Karl  
 Primary Examiner  
 Art Unit: 2834

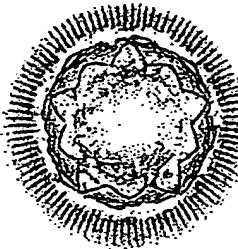
Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

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OCT 06 2003

OFFICE OF PETITIONS

Steven Mezinis



Thursday, July 18, 2002

USPTO  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Attn: Karl Tamai

Re: Application No. 09/682,451

Dear Karl:

Enclosed you will find:

1. A response to the last Office Action
2. A document citing references as per our phone conversation of Thursday, July 18, 2002

Thank you for your help and cooperation in putting this together.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Mezinis".

Steven Mezinis

---

Steven Mezinis  
230 Carneros Rd.

Aromas, CA 95004

(831) 726-3071  
Email [bul1x2@earthlink.net](mailto:bul1x2@earthlink.net)

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OCT 06 2003

OFFICE OF PETITIONS

Applicant : Steven Mezinis  
Application : 09/682,451  
No.  
Filed : 08/15/2001  
Title : Electric-Magnetic Field Motivator

Group/Art Unit : 2834  
Examiner : Karl I. Tamai

Thursday, July 18, 2002

Honorable Commissioner for Patents  
Washington DC 20321

Dear Karl Tamai:

In response to the Office Action Summary of April 24, 2002, please amend the above-identified application as follows:

**Title:** Change to – High Voltage LC Electric and Magnetic Field Motivator

**Claims:** Cancel all claims of record and substitute new claims 5-27, three independent and 20 dependant claims, as follows.

5) A high voltage LC device that uses electro-static and magnetic fields to produce motion comprising:

a motivator constructed of a core of conductive/magnetic material approximating a C, D, or toroidal shape to form at least two poles with surfaces facing each other separated by sufficient space between said pole surfaces to allow a freely moving predetermined target along with the requisite gaps to permit free movement; further including

at least one predetermined low voltage primary coil disposed around said core with a means to magnetically couple to at least one predetermined high voltage secondary coil whose output leads are electrically connected to at least two predetermined capacitive arrays of dielectrically insulated conductors buried respectively within said poles; and

a movable predetermined target comprising of electric/magnetic responsive material further including said gaps to allow heretofore movement.

6) The secondary coil in claim 5 wherein is a means to provide a high voltage electric field buried within said poles whereby inducing an electric charge accumulation within said poles.

7) The electric charge accumulation of claim 6 wherein is facilitated by means of a further included a low voltage magnetically coupled

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tertiary circuit electrically connected such that it complements induced charge accumulation within said core pole mass.

- 8) The tertiary circuit of claim 7 which may be comprised of:  
of a means to electrically insulate said conductive crescent's poles by separating said crescent of conductive core material about equally on the opposite side of the crescent from said poles further including an electrical insulation material in said separation; further including
  - a predetermined coil disposed such that it is magnetically coupled to said primary with said coil leads electrically attached to said poles; or
  - a disposition of said secondary such that said coil's central axis is aligned or parallel to said core's crescent or toroidal axis so that said core concentrically surrounds said secondary thereby magnetically coupling said core to said secondary; or any combination of the two, such as the latter disposition of the secondary coil with the former electrical separation of pole material further including a device selected from the group consisting of current control devices (resistors, coils, semiconductors, etc.) across said insulation in said separation.

9) The disposition of primary coil of claim 5 whereby induces a magnetic field in said poles in addition to magnetically coupling to the secondary coil.

10) The buried capacitive arrays of claim 5 comprising of a multitude of assemblies.

11) The assembly of claim 10 wherein each assembly comprising of a sheet of conductor material sandwiched between two sheets of dielectric insulator material.

12) The assemblies of claim 10 wherein each assembly is electrically connected in parallel to the adjacent assembly.

13) The assemblies of claim 10 wherein each said assembly face is parallel to the next and disposed such that said conductive core material sandwiches between said assemblies and surrounds said array of assemblies whereby any high voltage field on said conductors is physically surrounded by said core conductive material.

14) The arrays of claim 10 wherein the disposition of said arrays within said poles are such that the planes the flat assemblies occupy are non-parallel to the plane of the pole surface.

- 15) The target of claim 5 wherein is urged by means of said induced electric and magnetic fields emitting from said pole surfaces across said gap.
- 16) The target of claim 15 wherein having a predetermined electrical polarity (positive only, negative only, both/electrically polarized, or neutral).
- 17) The target of claim 15 further including a member wherein said member is a means to translate a predetermined motion (linear, rotational, or vibrational) to a predetermined workload.
- 18) The device of claim 5 further including requisite non-dielectric insulation as a means to prevent arcing.
- 19) An LC circuit comprising of:  
of at least one primary coil, at least one secondary coil, at least one capacitor, and a conductive/magnetic core; further including a magnetically coupled low voltage electric fields as a means to augmenting the capacitance of said circuit.
- 20) The circuit of claim 19 comprising of:  
placement of said secondary coil disposed respectively to said core such that upon excitation of said secondary produces complimentary low eddy currents within said core whereby provides said low voltage fields; or further including a tertiary low voltage coil whose disposition is such that magnetically coupling to said primary and electrically connected a set of electrically insulated poles produces said low voltage fields; or any combination of the two, further including a current control device as a means to alter said low voltage fields across electrically insulated poles.
- 21) The LC circuit of claim 19 by further including the necessary devices (coil, capacitor, wave shaping, etc.) as a means to tune said circuit to a predetermined frequency or operative state.
- 22) Charge accumulation within a conductive mass comprising of at least two poles by means of a buried dielectrically insulated high voltage electric field within said mass whereby reducing external arcing of an electric charge accumulation by said mass.
- 23) The high voltage field of claim 22 wherein an array of a multitude of conductors dielectrically insulated from said mass so that a charge introduced in said conductors induces the opposite charge in said mass.
- 24) The conductive mass of claim 23 wherein said mass surrounds said array such that the respective polarity of said high voltage introduced by said

buried conductors is surrounded by the induced opposite polarity in said mass.

25) The array of claim 23 comprising of a multitude of parallel connected high voltage dielectrically insulated conductor assemblies.

26) An assembly of claim 25 comprising of a sheet of conductor material sandwiched between two sheets of dielectric insulators.

27) The electric charge induced in said conductive mass of claim 22 wherein said charge accumulation is complemented by a magnetically coupled low voltage electric field applied to said mass.

#### REMARKS/ARGUMENTS

As per **Detailed Action 1**, the title has been changed to be more descriptive of the invention.

Enclosed is an information disclosure document as per **Detailed Action 2** and phone call of Thursday, July 18, 2002.

Also, the applicant has rewritten all claims to define more particularly and distinctly so as to overcome the technical rejections and define the invention patentably over the prior art.

#### The Objection of Detailed Action 3 of Claim Rejection Under § 112

Applicant requests reconsideration and withdrawal of this objection since the claims have a greater number and contain component assembly detail, and since details of the component construction described in the claims are contained in prior art.

Since the component construction described in the claims (tesla coils, magnetic cores, dielectric insulators, transformers, etc) are known prior art items, the details of their construction have been omitted. It is the quality, assembly, and physical disposition of these components that produce unexpected results from the previously assumed unworkability of a high voltage LC (coil/capacitor) circuit when applied to physical power applications.

#### The Objection of Detailed Action 4 of Claim Rejection Under § 112

Applicant requests reconsideration and withdrawal of this objection since old claim 1 has been removed and has been replaced with new claims 5-18, and since how and where support is provided for a target of any electromagnetic device is dependent on the preferred motion of the target (linear, rotational, or vibrational) and is a known prior art item (rod, arbor and bearings, or pre-tensioned lever, etc.).

The present prior art teaches how movement can be translated to work. The multitude of examples would be too lengthy to discuss here and are well known prior to

applicants filing date. New claim 17 defines the relationship of the predetermined target motion to known motions and introduces a member that can be any number of prior art items as a means to provide the necessary support for the target and to translate the target's motion in a preferred vector.

**The Objection of Detailed Action 5 of Claim Rejection Under § 112**

Applicant requests reconsideration and withdrawal of this objection since old claims 1-4 have been removed and have been replaced with new claims 5-27, and since new independent claims 5, 19, and 22 distinctly claim the subject matter that pertains to this invention: an LC circuit that uses magnetic and electric fields to produce motion and how buried high voltage electric fields within a conductive mass induces its opposite charge within that mass, i.e. charge induction.

Figures 4 and 6 within the specification portray LC circuits, which is an established subject matter. There are a plethora of prior art high voltage LC devices on the market (spark coils, flyback transformers, tesla coils, radio transmitters, etc.). Since new claim 5 distinctly mentions high voltage LC device, in addition, charge induction through a dielectric medium is not new and is established within the prior art with a multitude of capacitors and other devices, Detailed Action 5 has been overcome by the introduction of the term LC device in new claim 5 and with the means of charge induction within new claim 23.

**The Objection of Detailed Action 6 of Claim Rejection Under § 112**

Applicant requests reconsideration and withdrawal of this objection since old claims 1-4 have been removed and have been replaced with new claims 5-27, and since new claims 5-27 details the components and the structural relationship of the cooperative elements.

The primary coil 20 is the means to induce the magnetic field within the poles as per new claim 9, while the secondary coil 22 is the means to induce the electric field within the poles as detailed in new claims 5-14. How the fields affect the target will be determined by the target's electrical characteristics, new claim 16. Given the induced fields within poles traverse the gap mentioned in new claims 5 and 15 as other prior art devices (induction motors, relays, electro-static motors, etc.), the effect will be somewhat dependant on the target's electrical characteristics. Given the conductive target of new claims 5 and 15-17 is electrically neutral, whatever charge accumulation occurs within the poles will induce its opposite charge (as with any prior art capacitor) within the target causing attraction in this case.

**The Objection of Detailed Action 7 and 8 of Claim Rejection Under § 102**

Applicant requests reconsideration and withdrawal of these objections since old claims 1-4 have been removed and have been replaced with new claims 5-27; since the references stated (Hosoya) are poor references (in Japanese) with the provided English translation incomplete; and since whatever references provided that are in English, nowhere within such references, is there any mention of a LC device that is in new claim 5.

**The Objection of Detailed Action 9 and 10 of Claim Rejection Under § 103**

Applicant requests reconsideration and withdrawal of these objections since old claims 1-4 have been removed and have been replaced with new claims 5-27, since the previous objections to Hosoya, and since references stated (Bobbio) is a micro-electromechanical device, a linear only actuator, and designed for low voltages.

**The Rejection of Claims 1-4 On Bobbio and Hosoya Is Overcome**

The last Office Action rejected old independent claims 1-4 on Bobbio and Hosoya. All the new claims have been rewritten in more detail to define patentably over these references, and any combination thereof. Applicant requests reconsideration of this rejection, as now applicable to new claims 5-27, for the following reasons:

1. The references in Bobbio and Hosoya are poor and misunderstood references.
2. The proposed combination is not relevant to the new claims 5-27.
3. These novel physical features of new claims 5-27, and their synergism, produce new and unexpected results hence are unobvious and patentable over these references and prior art.

**The References and Differences of the Present Invention Thereover**

Applicant will discuss the references, how they relate to points one and two, and then the general novelty of the present invention and its unobviousness over the references, point three.

Hosoya teaches a motivator 2 driving a target 11 by electrostatic electrodes P1-8 and a magnetic field. The electrodes in Hosoya figures are not completely surrounded by any conductive material, magnets or otherwise, as in new claim 13; and consequently have a direct effect on the target instead of an indirect effect as with an induced charge of new claims 22-27. In addition, magnets in Hosoya specification are permanent magnets and are not part of the circuitry shown in Hosoya figures 2 and 3 as they are in shown in applicant's circuitry (figures 4 and 6). Nor, is there a dynamic electrical relationship occurring in Hosoya between the electrostatic field and the magnetic field such as any LC circuit has or as in applicant's specifications and claims.

As stated previously, it is not shown in Hosoya figures 1, 2, and 4 that the electrostatic electrodes P1-8 are not buried in the conductive ferromagnetic body. In addition, Hosoya figure 2 illustrates a DC power supply 23. However, there is no indication within the specifications provided of that DC power supply being electrically connected to the conductive ferromagnetic body. Instead figure 2 (Hosoya) indicates 23 is the power supply for what appears to be the motor controller 24. The combined references of Hosoya insulation layer 3 may be made of dielectric material as with the Bobbio patent and yet there isn't any mention of an LC circuit in either reference. The high voltages present with this invention's new claim 5 would cause a breakdown of specified micro-mechanical dielectric spacers and arc across the closely spaced strips of Bobbio claim 1 or may cause the insulator 3 or 13 (Hosoya) to breakdown or physically separate from the surfaces.

These novel physical features of new claims 5-27, and their synergism, produce new and unexpected results hence are un obvious and patentable over these references and prior art.

Applicant submits that the novel physical features, disposition, and their synergism are also unobvious and hence patentable under § 102 and 103 since they produce unexpected results over these references and prior art.

These new and unexpected results are the assembly of prior art into applicant's system of incorporating coil currents, capacitor currents, and ancillary currents in a complementary manner. The novelty and unobviousness of this invention concerns the following points:

1. Current phase difference of an LC circuit dictates when the magnetic fields are strongest the electric fields are at their weakest and vice versa.
2. Magnetic field power is applied by the primary coil 20 while the high voltage secondary 22 provides the electric field power.
3. Capacitance material of the capacitor of this LC circuit (core 10) is magnetically coupled to the coil thereby increasing capacitance potential.
4. What was once considered losses, such as eddy currents and dielectric leakage; contribute to the effectiveness of the device.
5. It allows large electric charge accumulations to be in close proximity with each other without arcing; thereby allowing the device to utilize the greater amount of force per unit of current available in Coulomb's Law and electric fields than is present with magnetic fields.
6. As with any LC circuit, when this LC circuit is brought into a resonant condition, the only impedance losses will be the DC resistance of the wire; therefore, a more efficient device.
7. The synchronous movement of a conductive target between the poles encourages charge accumulation within the poles therefore more effective.
8. The compilation of all the previous points into one device creates a unique item unobvious over the prior art.

As in point 1, this device uses the phase difference between the respective currents of coils and capacitors to provide a more constant pull not present in single-phase AC magnets. Instead of fields occurring twice per AC cycle, fields are present four times a cycle.

As in point 2, not only is the secondary coil 22 (new claims 5, 6, 19, and 20) magnetically coupled to the primary 20, each coil is dedicated to a particular task. The primary provides magnetic excitation to the poles while the secondary is the source of electric excitation of the poles.

The secondary becomes a means to generate an electric field and is also magnetically coupled to the charge holding medium (new claims 7, 8, 20, 22-27) of the capacitor that exhibits this electric field (point 3). This low voltage electric field around the capacitor array of new claim 5 allows for a greater charge accumulation in the core/capacitance material therefore power.

As in point 4, this invention's assembly allows a complete complementation of electric/magnetic fields to such a degree that even the eddy currents (figure 6 or new claim 20) are an essential part of the device's operation. For the device to achieve tons of force the core 10 eddy currents may be measured in only milli-amperes, if not in microamperes. In addition, any slight dielectric leakage that occurs through the arrays of claim 5 will be shunted through the conductive mass 10 or coil 26, aided by the tertiary circuit of claims 7 or 20, and be magnetically coupled back into the circuit in phase with existing magnetic fields.

Concerning point 5, this invention solves an assumed insoluble problem of arcing present with the close proximity of large charge accumulations not separated by a high voltage insulator. The invention achieves this by completely surrounding the high voltages with a neutral conductive mass 10 thereby inducing the opposite charge around the high voltage. Thus effectively polarizing the mass and locking the mass into an electrically polarized state. At the same time, the field inside the mass is not apparent from the outside of the mass because it is completely buried within the mass. Only the induced fields would be apparent. Because the electrical poles of this device are on this conductive mass, there will be no high voltage arcing between poles. Since the strength of this device is directly proportional to the voltage applied at the high voltage capacitor arrays of claim 5, the device may be appropriate for many medium to high power applications using less input current than prior art devices presently used.

With any coil or capacitor there are AC impedances (coil/inductance and capacitor/reactance) other than the DC resistance. When the two are brought together at a particular frequency the coil inductance cancels the capacitance reactance and the power supply 'sees' only the DC resistance of the circuit, as in point 6.

This system of mutual complementation is so complete that the target within the system, as it operates, would feed back into the system enhancing operation (point 7). The opposite charge accumulation induced in an electrically neutral target will reflect back to the pole and allow for greater accumulation of charge on the pole opposite it, which induces the target, etc. If the target is polarized as in claim 16 or figure 5, option B this also will reflect back to the motivator poles, again, allowing a greater charge accumulation in said poles.

This combined system creates a synergistic contrarian invention. The applicant recognizes that all the components that make up this device can fall under some prior art; however, all the qualities mentioned in these points along with the lack of implementation of this particular assembly is indicative of its unobviousness (point 7). The unexpected result of this assembly is it overcomes prior art assumption of unworkability of using the increased currents and voltages present in an LC circuit for anything other than RF power.

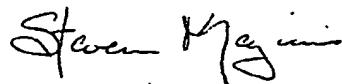
### Conclusion

For all of the above reasons, applicant submits that the specification and claims are now in proper form, and that the claims all define patentably over the prior art. Therefore he submits that this application is now in condition for allowance, which action he respectively solicits.

**Conditional Request for Constructive Assistance**

Applicant has amended the specification and claims of this application so they are proper, definite, and define novel structure, which is also unobvious. If, for any reason this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P § 706.03(d) and § 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

Very respectfully,



Steven Mezinis

-----Applicant Pro Se-----

**Cited References**

Patent Number	Name	Classification	Date
269,281	Gramme	388/840	December 19, 1882
382,279	Tesla	318/727	May 1, 1888
735,621	Thomson	318/116	August 4, 1903
3,414,742	Fisher, et al.	310/308	December 3, 1968
3,629,624	Staudte	310/309	December 21, 1971
3,951,000	Ferriss, et al.	74/5.6D	April 20, 1976
4,225,801	Parker, Jr.	310/308	September 30, 1980
4,344,103	Nagamoto	361/160	August 10, 1982
5,726,509	Benecke, et al.	310/40MM	March 10, 1998
5,965,968	Robert, et al	310/310	December 12, 1999

Besides that which already has been indicated; enclosed you will find:



- 1) Copies of 1<sup>st</sup> office action documents
- 2) Copies of 2<sup>nd</sup> office action documents
- 3) Copies of 3<sup>rd</sup> office action documents
- 4) Response to 2<sup>nd</sup> office action
  - a) Cover letter
  - b) Documents addressing 2<sup>nd</sup> office action issues
    - i) Claim amendments
    - ii) Change of invention title
    - iii) Remarks and arguments
- 5) Reasons for delay that led to abandonment

The notes on the office actions are mine and were for my use.

**Reasons for Delay**

I hereby petition to reinstate an abandoned patent application due to an unavoidable delay for the following reasons:

- 1) After the patent was originally filed, I received the first office action (1). My response (claims amendment) to the office action was by fax through my computer. I did a follow-up phone call to Karl Tamai to ensure that the fax got there and that the lines of communication were open and working.
- 2) Upon receipt of the second office action (2), I wrote a cover letter (4a) and addressed the issues presented in that office action (4b). This too was faxed through my computer.
- 3) Unfortunately, by causes unknown, this fax never reached you. I did not do a follow up phone call at that time because I assumed the lines of communication were working. When not hearing from PTO, I assumed my amendments were accepted. This first indication I had that something was wrong was the office action dated 12/03/02.
- 4) In addition, because the fax was done through my computer and my computer was restructured since then, I have no record or proof that the fax was made. (The computer was giving me problems, I went to a backup, and the backup did not contain the fax log.)

In conclusion, I request that abandonment of patent application no. 09/682/451 be reconsidered. I recognize that my ignorance is a significant variable to this situation. However, this request is made under the 'unavoidable' category because it definitely was unintended and the cause of the delay that brought the application into abandonment was a failed fax.

Very respectfully,

Steven Mezinis

Date:



## UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Pat  
United States Patent and Trademark Of  
Washington, D.C.



STEVEN MEZINIS  
230 CARNEROS  
AROMAS, CA 95004-9711

Paper No. 7  
**COPY MAILED**

JAN 21 2003

**OFFICE OF PETITIONS**

In re Application of  
Steven Mezinis  
Application No. 09/682,451  
Filed: August 15, 2001  
Title of Invention:  
ELECTRIC-MAGNETIC FIELD MOTIVATION

DECISION ON PETITION

This is a decision on the petition to revive the above-identified application under 37 CFR 1.137(a), filed on January 13<sup>1</sup>, 2003.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137." This is not final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed on April 24, 2002. No extensions of time having been obtained pursuant to 37 CFR 1.136(a), the above-identified application became abandoned on July 25, 2002. A Notice of Abandonment was mailed on December 3, 2002.

**Petition under 37 CFR 1.137(a) for unavoidable abandonment**

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a notice of appeal and the requisite fee; a continuing application; an amendment or request for reconsideration which *prima facie* places the application in condition for allowance, or a first or second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 U.S.C. 120, 121 and 365(c); (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c). The instant petition lacks items (1) and (3).

<sup>1</sup>This petition was filed on January 5, 2003 via facsimile; however, the petition was not considered on the merits because the petition lacked the petition fee.

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Applicant has not provided an adequate showing of unavoidable delay

Applicant's Assertion

Petitioner asserts that the delay in responding to the April 24, 2002, because, for "causes unknown, this fax never reached [the USPTO]". Petition at Document 5. Petitioner was, therefore, unaware that his response was not received. Petitioner also avers that the delay was unavoidable "because it definitely was 'unintended'..." *Id.*

Applicable Law

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In re Mattulath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

Applicant is further advised that the Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Houston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (N.D. Ind. 1987). Specifically, petitioner's delay caused by the actions or inactions of his voluntarily chosen representative does not constitute unavoidable delay within the

Application No. 09/682,451

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meaning of 35 U.S.C. 133 or 37 CFR 1.137(a). Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891). In re Mattuulath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

Finally, a "delay (in responding) resulting from the lack of knowledge or improper application of the patent statute, rules of practice, or MPEP, [] does not constitute unavoidable delay." MPEP 711.03(c).

#### Analysis

It is the conclusion of this Office that a prudent and careful man in relation to their most important business would have taken steps to ensure the correspondence was received in the Office.

Petitioner is advised that there are three provisions wherein this Office will consider correspondence as being timely filed. The first method provides that

"correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(I) The correspondence is mailed or transmitted prior to the expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage first class mail; or

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(c); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

37 CFR 1.8.

The second method, under 37 CFR 1.10, provides for the filing of papers and fees by "Express Mail." The Office considers the date the correspondence is shown to have been deposited as "Express

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Page 4

Mail" to be the "date-in" on the Express Mail mailing label. See Manual of Patent Examining Procedure ("MPEP") §513. The date indicated on the "date-in" on the Express Mail mailing label verifies that the package was actually mailed.

Finally, section 503 MPEP provides that

[i]f a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all items listed thereon on the date stamped thereon by the USPTO.

It is the conclusion of this Office that a prudent and careful man in relation to their most important business would have complied with one of the above methods. If Petitioner has complied with one of the three methods wherein this Office considers correspondence as being timely filed as set out above, Petitioner should submit such evidence in a renewed petition.

#### Alternate Venue

Petitioner is strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee, currently \$650.00.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

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